

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

CRL.A.No. 112 of 2011 ( )

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AGAINST THE ORDER IN CC 98/2010 of JUDICIAL FIRST CLASS MAGISTRATE-II,  
CHENGANNUR DATED 20.08.2010

AGAINST THE ORDER IN CrI.L.P. 1171/2010 of HIGH COURT OF KERALA DATED  
05.01.2011

APPELLANT/COMPLAINANT:

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K.P.SOMAN, PLAMPARAPIL HOUSE,  
PODIYADI, THIRUVALLA

BY ADV. SRI.C.V.MANUVILSAN

RESPONDENTS/ACCUSED/STATE:

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1. SUGADHAN, RANDUPARAYIL HOUSE,  
KOMANA, AMBALAPUZHA, PIN-688561

2. K.B.THOMAS, KOLLELIL HOUSE,  
PULIYOOR CHENGANNUR, PIN-689121

3. STATE OF KERALA,  
REPRESENTED THROUGH THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01-12-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**SUNIL THOMAS, J.**

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**Crl.A.No.112 of 2011**

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Dated this the 01<sup>st</sup> day of December, 2015

**JUDGMENT**

Appellant had laid a complaint against the accused invoking Section 138 of the Negotiable Instruments Act on the strength of four cheques of Rs.80,000/- each issued by accused Nos.1 and 2 together. Pursuant to the summons served, the accused appeared and the case was adjourned for evidence. It stood posted to 20.08.2010. On that day, the complainant and his counsel were absent. Hence the court below, invoking Section 256(1) of the Cr.P.C., acquitted the accused. This is challenged in this appeal.

2. In spite of service of notice, respondents 1 and 2 have not appeared. Heard the learned counsel for the appellant and examined the records.

3. Admittedly, the case stood posted to 20.08.2010. On that day, the appellant was absent. The counsel was also absent. The specific reason stated in the appeal memorandum is that the clerk of the counsel appearing before the trial court wrongly took down the date as 14.09.2010. It is further stated that on that day,

the case was not called and on an enquiry, it was found that the case was dismissed on 20.08.2010. It was also brought out that there were two other earlier postings, on which date also, the appellant and counsel remained absent.

4. Adv.Indulekha Joseph, learned counsel for the appellant, contended that there was no default on the side of the complainant and the entire incident occurred due to an inadvertent omission on the part of the clerk in noting down the date. To substantiate the contention that the complainant was present on 14.09.2010 and that earlier proceedings were brought to the notice of the counsel on that day alone, learned counsel invited my attention to the certified copy of the impugned order which also substantiates that the copy application was made on 14.09.2010. It is true that the court below has taken an extreme lenient view by granting atleast two adjournments, in spite of the fact that the counsel and the client were absent. It is pertinent to note that the case arose out of the dishonour of a cheque of the year 2009. The case was pending for quite sometime before the court below and till its dismissal, complaint was being effectively prosecuted by the complainant without any default. It cannot be easily presumed

that the complainant, after having prosecuted the matter, especially one involving huge amount, would remain lethargic voluntarily and knowingly invite a dismissal of the complaint. Considering these facts, I feel that the impugned order is liable to be set aside and the matter is to be remanded to the court below to enable the complainant to prosecute his case.

In the light of the above, the appeal is allowed. The impugned order is set aside and the matter is remanded to the court below to enable the complainant to prosecute the matter. Both sides shall appear before the court below on 12.01.2016. In the event of the accused remaining absent, the court below shall issue fresh summons to the accused to procure their presence.

Sd/-  
**SUNIL THOMAS**  
**Judge**

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True Copy /

P.A to Judge